MOTION FILED
AUG 2 - 2004

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No. ___

IN THE

Supreme Court of the United States

DENNY'S, INCORPORATED *et al.*,
Petitioners,

v.

CHUCK CAKE,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF *AMICUS CURIAE* OF THE NATIONAL RESTAURANT ASSOCIATION IN SUPPORT OF PETITIONERS

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MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

Pursuant to Rule 37.2(b) of the Rules of this Court, National Restaurant Association respectively moves for leave to file the attached brief *amicus curiae* in support of Petitioners. Petitioners have consented to the filing of the brief. However, this motion is made necessary because the Respondent has objected to filing of the attached brief *amicus curiae* by the National Restaurant Association.

The National Restaurant Association is the leading trade association for the food service industry representing over 315,000 food service providers. Many of those members have ERISA plans that apply uniformly to all of their employees

that work in several states, including California. This case involves the question whether the federal Anti-Injunction Act, 28 U.S.C. § 2283, may be used to preclude the uniform administration of an ERISA plan by a chain member restaurant to its restaurant units in several states, including California.

Since the question presented by the petition is of substantial importance to the National Restaurant Association members, the Association respectfully moves for leave to file the attached brief *amicus curiae* in support of Petitioners.

Respectfully submitted,

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QUESTIONS PRESENTED

Petitioners' petition presents the following questions for review:

1. Whether the U.S. Court of Appeals for the Fourth Circuit misinterpreted the Anti-Injunction Act ("AIA"), 28 U.S.C. § 2283, when it held that the federal district court lacked authority to enjoin state proceedings commenced after Petitioners filed for injunctive relief in federal court.

2. Whether the Fourth Circuit misinterpreted the AIA and the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.*, when it held that Petitioners' request for declaratory and injunctive relief was not "expressly authorized" under 28 U.S.C. § 2283.

3. Whether the Fourth Circuit erroneously ruled that all forms of declaratory relief, as requested by Petitioners, constituted an injunctive proceeding within the meaning of 28 U.S.C. § 2283.

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BRIEF *AMICUS CURIAE* OF THE NATIONAL RESTAURANT ASSOCIATION IN SUPPORT OF PETITIONERS

STATEMENT OF INTEREST OF *AMICUS CURIAE*

The National Restaurant Association ("NRA") is the largest trade association representing restaurants in the United States.[1] Membership in the NRA includes over 315,000 foodservice establishments and restaurant units. Petitioner Denny's, Inc. represents itself in this proceeding as a national restaurant chain employing some 30,000 persons throughout several states, including California. Similar restaurant chain members (defined by the National Restaurant Association as

[1] Petitioners have consented to the filing of this brief. Respondent has not consented. No counsel for a party authored this brief in whole or in part, and no person or entity other than *amicus curiae* made a monetary contribution to the preparation or submission of this brief.

a restaurant or foodservice establishment that owns or franchises with at least eight or more units operating in five or more states), with similar plans applicable to a chain member's employees nationwide in many states, including California, constitute approximately ten percent (10%) of NRA's total membership.

The restaurant industry employs an estimated 12 million workers, making it the largest private-sector employer in the United States. This industry provides work for nearly 9% of all persons employed in the United States. Restaurant industry sales in 2004 are forecast to equal 4% of the U.S. gross domestic product, with the overall economic impact of the restaurant industry expected in 2004 to exceed $1.2 trillion. *National Restaurant Association Restaurant Industry Pocket FactBook 2004.*

NRA chain members will be directly impacted by a ruling on the issues in this petition. Most chain member restaurants of the National Restaurant Association have various employment policies covered by ERISA, including policies covering vacation benefits, health benefits, retirement plans, etc. The issues presented by this petition and decision by this Court will impact similarly situated National Restaurant Association members.

SUMMARY OF ARGUMENT

Notwithstanding congressional intent under ERISA, 29 U.S.C. § 1144 (i.e., ERISA preempts state laws attempting to govern the terms of an ERISA plan), the Court of Appeals below denied Petitioners' declaratory and injunctive relief to prohibit California state proceedings to implement a state labor law requirement that would prevent uniform application of Petitioners' ERISA plan to employees in California. The U.S. Court of Appeals for the Fourth Circuit misinterpreted the Anti-Injunction Act when it ruled below, contrary to decisions of the U.S. Courts of Appeal for the First, Seventh and Eighth Circuits, that the federal district court lacked

authority to enjoin state court proceedings commenced *after* Petitioners initiated federal court action. The Court of Appeals also committed reversible error in holding, contrary to rulings of the U.S. Courts of Appeal for the Second and Sixth Circuits, that Petitioners' request for declaratory and injunctive relief in the district court was not "expressly authorized" within the meaning of 28 U.S.C § 2283. Finally, the Court of Appeals below erroneously ruled, in conflict with several other U.S. Courts of Appeal, that Petitioners' request for *declaratory relief* essentially constituted "an injunction to stay proceedings in a state court" within the meaning of the Anti-Injunction Act, 28 U.S.C. § 2283. Because each of these rulings was material in denying Petitioners' requests, and such rulings are in conflict with rulings by other Courts of Appeal, the petition should be granted.

ARGUMENT

I. THE QUESTION WHETHER 28 U.S.C. § 2283 APPLIES TO STATE COURT PROCEEDINGS COMMENCED AFTER INJUNCTIVE RELIEF IS FILED IN FEDERAL COURT NEEDS RESOLUTION

Petitioners institute uniform vacation plans subject to the Employee Recruitment Income Security Act ("ERISA") of 1974, 29 U.S.C. § 1001 et seq., nationwide to all Denny's restaurants in numerous states, including California. California Labor Code § 227.3 imposes requirements on employer policies concerning payment of employee vested vacation time upon employment termination. However, that state law provision conflicts with Petitioners' plan requirements. Petitioners filed for injunctive and declaratory relief in federal district court. Before the federal district court acted on the requested relief, however, the state of California sought in California state court imposition of state law requirements to Petitioners' Plan.

The Supreme Court has ruled that the federal Anti-Injunction Act, 28 U.S.C. § 2283 ("AIA"), does *not* bar injunctions against the commencement of state court proceedings. *See Dombrowski v. Pfister*, 380 U.S. 479, 484 n. 2 (1965). That decision did not address, however, the precise issue where state proceedings are not pending until *after* the injunctive relief is requested in federal court, as presented by Petitioners.

A clear split among the U.S. Circuit Courts of Appeal exists on the issue. For example, in *Royal Ins. Co. of America v. Quinn-L Capital Corp.*, 3 F.3d 877, 884 (5th Cir. 1993), the U.S. Court of Appeals for the Fifth Circuit stated that "[a] circuit split exists on the question whether the [AIA] . . . appl[ies] where the injunction is sought before a state suit has been filed but is not issued until after [such filing] . . ." Similarly, the split was recognized by the U.S. Court of Appeals for the Second Circuit in *Standard Microsystems Corp. v. Texas Instruments, Inc.*, 916 F. 2d 58, 61 (2d Cir. 1990), and the Sixth Court in *Roth v. Bank of Commonwealth*, 583 F. 2d 527, 533 (6th Cir. 1978).

Because of this long-standing split among the lower courts that jeopardizes the uniform application of ERISA policies, particularly to Petitioners' policies and policies of similarly situated chain restaurant members of the National Restaurant Association that will be impacted by a ruling on the questions before this court, review should be granted.

II. THE COURTS OF APPEAL CONFLICT WHETHER ERISA IS A STATUTORILY AUTHORIZED EXCEPTION TO 28 U.S.C. § 2283

The federal Anti-Injunction Act ("AIA"), 28 U.S.C. § 2283, is inapplicable if the injunctive relief requested by Petitioners in the federal court below is "expressly authorized by Act of Congress." 28 U.S.C. § 2283. Five appellate courts have considered the issue presented by Petitioners whether

ERISA provides the express authorization within the meaning of 28 U.S.C. § 2283, with split results. Compare, *General Motors Corp. v. Buha*, 623 F. 2d 455 (6th Cir. 1980), and *Gilbert v. Burlington Industries*, 765 F. 2d 320 (2d Cir. 1985) with *Total Plan Services, Inc. v. Texas Retailers Ass'n, Inc.*, 925 F. 2d 142 (5th Cir. 1991). It is critical to NRA members with ERISA plans that uniformly apply to employees in restaurant outlets in several states that Petitioners' petition on this issue be reviewed in order to resolve the split among the Courts of Appeal. A ruling by this Court on the question presented for review could result in a uniform understanding of the circumstances in which federal adjudication of plan-related issues may occur.

III. THE COURT SHOULD RESOLVE WHETHER THE ANTI-INJUNCTION ACT PROHIBITS THE DECLARATORY RELIEF SOUGHT BY PETITIONERS

Petitioners sought declaratory relief that (1) the Denny's plan and trust constituted an employee welfare benefit plan under ERISA, and (2) a declaration that ERISA preempts California law to the extent that state law interferes with Petitioners uniform enforcement of its ERISA plan and trust. The Fourth Circuit below ruled that, notwithstanding the Anti-Injunction Act's limitation under 28 U.S.C. § 2283 to *injunctions*, "injunctions" also encompass the *declaratory relief* sought by Petitioners. The rationale for denying Petitioners' request was that declaratory relief supposedly would have the "same effect as an injunction."

This ruling conflicts with rulings of other U.S. Courts of Appeal, as pointed out in Petitioners' petition. To construe the AIA beyond the clear wording of the statute also appears contrary to the ruling of this Court in *Vendo Co. v. Lektro-Vend Corp.* 433 U.S. 623, 642 (1977), and prohibits Petitioners (and ERISA employee benefit plan sponsors, including NRA members) from even seeking a federal court

declaration of rights where applicable state law conflicts with, and is contrary to, congressional intent under ERISA. 29 U.S.C. §§ 1114, 1132(e); also see *Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1, 26 (1983).

As recently stated by this Court in *R.B. Yates Profit Sharing Plan v. Hendon*, ___ U.S. ___, 124 S. Ct. 1330, 1341 (2004): "[A] goal of ERISA is to enable employers to establish a uniform administrative scheme . . ." Uniformity is impossible, however, if plans are subject to different legal obligations in different states. Such lack of uniformity impacts Petitioners', and similarly situated NRA members', ability to implement plans on a nationwide basis. This is contrary to the express intent of Congress under ERISA.

CONCLUSION

For the reason set forth above, and because the impact of such ruling extends far beyond the parties directly involved in this case, *amicus curiae*, the National Restaurant Association, respectfully requests that the Court grant Petitioners' request for a Writ of Certiorari.

Respectfully Submitted,

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